

May 5, 2021

VIA EMAIL: HQ.FOIA@EPA.gov

Freedom of Information Act Officer
US Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: FOIA Request for Certain Texas Facilities

Dear FOIA Officer:

This is a request for public records made by Strategies for Ethical and Environmental Development (SEED), pursuant to the Federal Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq. This request satisfies the written request requirement. If this office is not the appropriate place for this request, please forward the request to the correct office or individual, and inform us when doing so.

SEED requests that you please provide the following records and information:

- Any and all records obtained by EPA from state and federal agencies (including information reported directly to EPA), and any other existing sources, pertaining to animal feeding operations (AFOs) and concentrated animal feeding operations (CAFOs), including but not limited to:
 - Permit applications pursuant to National Pollutant Discharge Elimination System (NPDES);
 - Inspection and/or enforcement reports pursuant to NPDES;
 - Permit applications pursuant to any other state permitting programs applicable to AFOs/CAFOs;
 - Inspection and/or enforcement reports pursuant to any other state permitting programs applicable to AFOs/CAFOs;
 - Records, reports, files relevant to administration and enforcement of Clean Water Act programs as applied to AFOs/CAFOs;
 - If none of the above records exists for a state, then any documents or records obtained and/or created by EPA to determine whether the state requires animal feeding operations to obtain permits.
- **The above information is requested for the following facilities only:**
 - The above information is requested from January 1, 2016 to the date this request is received.

- Beyer Dairy 1, located at 8892 S. US 377, Dublin, TX 76446 (EPA ID: TX0123765);
- Erath County Dairy Sales and Livestock Commission, located at 8892 S. US 377, Dublin, TX 76446 (EPA ID: TX0126985);
- ABF Packing, Ltd., located at 8785 S US Highway 377, Dublin, TX 76446 (no known EPA ID);
- Texas Best Proteins LP, located at 5775 FM 2201, Santo, TX 76472 (no known EPA ID); and
- Kennedy Sausage Co., located at 5775 FM 2201, Santo, TX 76472 and/or 1318 Clear Lake Rd., Weatherford, TX 76086 (no known EPA ID).

As used in this request, the term “records” refers to the documents described above but also includes any relevant webinars, reports, studies, powerpoint presentations, correspondence (including recorded messages), memoranda, meeting notes and minutes, drafts and working papers, notes and summaries of conversations and interviews, electronic mail messages (emails), audit reports, contracts, agreements, technical proposals, noncompliance reports, consumer complaints, third-party complaints (e.g. complaints from the general public or employees within the agency), presentations, graphic material, photographs, video, and any other form of written, electronic, or recorded information.

To the extent that records responsive to this request are available in a widely-used electronic format (e.g., pdf, Excel, Word, or WordPerfect files), we would prefer to receive them in that format, provided that the electronic versions are in comprehensible form.

If you regard any of the requested records to be exempt from required disclosure under FOIA, we request that you disclose them nevertheless, as such disclosure would serve the public interest of educating citizens and advancing the purposes of the Clean Water Act.

In the event that you regard any requested records to be exempt and determine not to disclose them (or portions of them), we request that you provide an itemized index which describes each withheld record (or portion) and provides the date of the record, the form of the record, the location of the record, the disclosure exemption that you believe applies and your rationale, and whether any reasonably segregable information has been disclosed.

We also request that responsive records be released as soon as they are available, but in no event later than 20 days as required by law. To the extent that some subset of the requested records is readily available and can be provided immediately, please send it immediately while EPA searches for other records.

Request for Fee Waiver

SEED is a nonprofit organization dedicated to preventing cruelty to farmed animals and promoting compassionate food choices and policies. As a 501(c)(3) nonprofit organization, SEED does not have a commercial, trade, or profit interest in the information requested, and thus is not requesting “trade secrets and commercial or financial information obtained from a person and privileged or confidential”, or any other information exempted pursuant to 5 U.S.C. § 552(b).

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A waiver of search, review, and duplication fees is warranted here, because disclosure of the requested records meets the two-part public interest test in that “it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Both the legislative history and administrative and judicial interpretations of FOIA make clear that the “fee waiver provision is to be liberally construed in favor of waivers for non-commercial requesters.” *Schoenman v. F.B.I.*, 604 F. Supp. 2d 174, 192 (D.D.C. 2009) (*see also McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282 (9th Cir. 1987)).

The request at issue satisfies the legal requirements of a mandatory public interest fee waiver under both 5 U.S.C. § 552(a)(4)(A)(iii) and EPA’s implementation of the same set forth in 40 C.F.R. § 2.107. SEED has the ability to contribute to the public’s understanding of the operations of the government, specifically the agency’s activities relating to the oversight of discharge sources.

If, however, the waiver is denied and the request will involve more than two search hours or more than 100 pages of documents, and the fees will exceed twenty-five dollars (\$25.00), please notify us immediately by telephone before the request is processed, so we may decide whether to pay the additional fees or to appeal the denial of the request for waiver.

The records and any related correspondence, including questions regarding this request, should be addressed to:

Cailen LaBarge
 Strategies for Ethical and Environmental Development
 1421 Orleans Rd., PMB #311
 East Harwich, MA 02645
 (518) 330 - 9539
clabarge@ethicalstrategies.org

On behalf of Strategies for Ethical and Environmental Development, thank you very much for your time and attention.

Sincerely,

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Executive Director, US
Strategies for Ethical and Environmental Development